

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317)232-9855

**ADMINISTRATIVE RULE
FISCAL IMPACT STATEMENT**

PROPOSED RULE: 02-04

STATE AGENCY: Department of State Revenue

DATE PREPARED: Oct 10, 2004

DATE RECEIVED: Sep 8, 2004

FISCAL ANALYST: Jim Landers

PHONE NUMBER: 317-232-9869

Digest of Proposed Rule: This rule amends 45 IAC 18 concerning charity gaming. It also repeals 45 IAC 18-1-2, 45 IAC 18-1-3, 45 IAC 18-1-4, 45 IAC 18-1-5, 45 IAC 18-1-6, 45 IAC 18-1-7, 45 IAC 18-1-8, 45 IAC 18-3-3, 45 IAC 18-6-1, and 45 IAC 18-6-2. The rule is effective 30 days after filing with the Secretary of State.

Governmental Entities: It is estimated that the *use of proceeds* requirements proposed in 45 IAC 18-3-7 could potentially result in the suspension or revocation of 165 charity gaming licenses held in FY 2004. This could potentially reduce revenue from charity gaming license fees by \$273,000 to \$963,500, depending upon the extent that patrons of these licensees shift their gaming expenditures to other charitable gaming licensees.

Background: The Charity Gaming License Fee is based on the total gross receipts earned from charity gaming by a licensed organization. The initial license fee is \$25. The subsequent license fee can range from \$25 for organizations with less than \$15,000 in charity gaming gross receipts to \$25,000 for organizations with at least \$3.0 M in charity gaming gross receipts. It is estimated that 165 organizations currently holding charity gaming licenses would have insufficient profit to meet the use of proceeds requirements. (See *Regulated Entities* for more detailed information on the use of proceeds requirements and current charity gaming licensees.) Charity gaming gross receipts of these 165 licensees totaled about \$128.1 M in FY 2004. The license fees on the charity gaming gross receipts of these organizations is computed to total about \$963,500. Eliminating charity gaming activities of these organizations would result in a loss of this annual license fee revenue, assuming patrons of these licensees don't shift their expenditures to another charity gaming licensee. However, the net revenue loss could potentially decline to about \$273,000 if patrons shift all of their charity gaming expenditures to other charity gaming licensees.

Regulated Entities: *Summary:* It is estimated that the *use of proceeds* requirements proposed in 45 IAC 18-3-7 could potentially result in the suspension or revocation of 165 charity gaming licenses held in FY 2004. These licensees reported profit margins that would be insufficient to meet the use of proceeds requirements. However, a total of 2,063 licensees would have profit margins sufficient to meet these requirements. Of these 165 licensees who would not meet the new requirements, 126 reported positive net proceeds from charity gaming. Due to the use of proceeds requirements, these licensees would experience a loss of approximately \$7.36 M annually. This total equals the net proceeds from charity gaming activities that was either retained for the charitable purposes of these 126 licensees or contributed to other charitable organizations. This outcome, however, may result in a net gain of approximately \$7.36 M to the 2,063 licensees that reported profit margins in FY 2004 sufficient to meet the use of

proceeds requirements. This assumes that patrons of the 165 licensees not able to conduct charity gaming activities would shift their charity gaming expenditures (approximately \$128.1 M in FY 2004) to the remaining licensees. Given the higher profit margins of the remaining licensees, the \$128.1 M in expenditures could potentially translate into more than \$7.36 M in net proceeds.

Background: The rule requires charity gaming organizations to use a specified minimum percentage of their charitable gaming gross receipts for: (1) the charitable, community, or educational purposes of the organization; or (2) the acquisition, construction, maintenance, or repair of real property involved in the operation of the organization and used for the charitable, community, or educational purposes of the organization. The minimum use of proceeds requirements are specified in the table below.

Annual Charity Gaming Gross Receipts	Percent to be Used for Charitable, Community, or Educational Purposes of the Organization
Less than \$150,000	5%
\$150,000 to \$500,000	8%
More than \$500,000	10%

The rule provides for the suspension or revocation of a charity gaming license in the event an organization doesn't comply with the use of proceeds requirements. Under the rule, suspensions last for a period of time determined by the Department of State Revenue (DOR), but revocations are permanent. The rule also provides for an exception to the use of proceeds requirement if an organization is within less than one percentage point of the use of proceeds requirement. In such a case, the organization may obtain a charity gaming license for the following year, but must pay the shortage from its net proceeds in the following year. Failure to do so results in a one-year license suspension. The rule also specifies that use of proceeds by an organization must be made by a check written from its charitable gaming account. The rule also specifies permitted uses of charitable gaming net proceeds and prohibits certain uses of charitable gaming net proceeds.

According to preliminary financial data, there were 2,253 charity gaming license holders in FY 2004. Based on reported profit margins, 2,063 of the licensees would be able to meet the applicable use of proceeds requirement. The average profit margin of these licensees was 16.7%. The licensees reported gross receipts totaling approximately \$410.7 M and about \$68.5 M in net proceeds available for the charitable purposes of these organizations. Assuming none of these licensees obtained an initial charity gaming license, license fees were calculated to total approximately \$2.85 M. In contrast, 165 licensees reported profit margins that would be insufficient to meet the applicable use of proceeds requirement. The average profit margin of this group was 5.7%. These licensees reported approximately \$128.1 M in gross receipts. Also, 126 of these licensees reported positive net proceeds from charity gaming, totaling about \$7.36 M. License fees for this group was calculated at \$963,475. Financial information on the two groups of licensees is outlined in the table below.

Charity Gaming Licensees with Insufficient Profit to Comply with "Use of Proceeds" Requirements*				
Annual Gross Receipts	Number of Licensees	% Share	Gross Receipts	Profit
Less than \$150,000	56	33.94%	\$1,000,809	-3.81%
\$150,000 to \$500,000	32	19.39%	\$9,866,002	4.59%
More than \$500,000	77	46.67%	\$117,220,936	5.88%
Total	165		\$128,087,748	5.70%

Charity Gaming Licensees with Sufficient Profit to Comply with "Use of Proceeds" Requirements*				
Annual Gross Receipts	Number of Licensees	% Share	Gross Receipts	Profit
Less than \$150,000	1641	79.54%	\$42,219,690	36.11%
\$150,000 to \$500,000	235	11.39%	\$69,374,913	16.57%
More than \$500,000	187	9.06%	\$299,142,255	13.95%
Total	2063		\$410,736,858	16.67%

*Based on FY 2004 financial information. Excludes 25 licensees reporting no gross receipts.

Other provisions: The rule includes other provisions that could potentially have some impact on charity gaming organizations, or manufacturers and distributors of charitable gaming cards. The impact of these requirements is indeterminable. The rule does the following:

- (1) Narrows the definition of an organization "member" for purposes of delineating individuals who may work at an organization's charity gaming events.
- (2) Specifies those persons who may operate charity gaming activities for an organization.
- (3) Specifies requirements for DOR access to organization records, including membership information, financial records, and receipts for purchases of charity gaming supplies and cards.
- (4) Establishes reporting requirements for manufacturers and distributors of charity gaming supplies and cards.
- (5) Establishes a process for the DOR to notify a licensee that it will assess additional charity gaming tax on the licensee, and establishes a process for protesting DOR findings of charity gaming violations.

Information Sources: *Charity Gaming Annual Report*, Department of State Revenue, FY 2002-2004.